CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. II

Date of hearing/decision: 16.05.2018

S. T. Appeal No. 55540 of 2013
(Arising out of Order-in-Appeal No. IND/CEX/000/APP/343/2012 dated 18.10.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Indore).

Dilip Kumar Joshi Appellant

Vs.

CCE&ST, Indore Respondent

Appearance:

Sh. Pulkit Tare, Advocate for the appellant
Sh. Sanjay Jain, AR for the Respondent

Coram:

Hon'ble Mr. V. Padmanabhan, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 51941/2018

Per: **V. Padmanabhan**:

The present appeal is against Order-in-Appeal No. 343/2012 dated 18.10.2012.

2. The dispute covered the period 16.06.2005 to 30.04.2006 during which the appellant, as an individual was providing the service of 'Manpower Recruitment and Supply Agency' to various customers. It is pertinent to record that the definition of the above service underwent an amendment w.e.f. 01.05.2006 by which the word "Commercial concern" was substituted by "Person", vide Notification No. 19/2006-ST dated

25.04.2006. The Department, after issue of show cause notice, demanded the service tax on the amount received by the appellant under the above category. Both the authorities below came to the concurrent findings that service tax is required to be paid particularly after the amendment carried out w.e.f. 01.05.2006. In the impugned order, the penalties under Sections 70 & 76 were set aside but the recovery of interest as well as penalty under Section 78 was upheld. The said order is challenged before us.

3. With the above background, we heard Sh. Pulkit Tare, ld. Advocate for the appellant and Sh. Sanjay Jain, ld. AR for the Revenue.

4. Ld. Advocate argued that the service tax demand is not justified. He further argued that there has been no positive act of suppression on the part of the appellant and hence such penalty imposed under Section 78 may be set aside.

5. Ld. AR appearing for the Revenue justified the impugned order. He argued that after the amendment w.e.f. 01.05.2006 the liability for payment of service tax on the appellant is without doubt. As such he prayed that the impugned order may be upheld.

6. After hearing both sides and on perusal of record, we are of the view that the service provided by the appellant is squarely covered by the definition of “Manpower Recruitment and Supply Service”, particularly after the amendment carried out on 01.05.2006 which has brought the service provided by any person within the ambit of the service tax.

Consequently, we uphold the demand of service tax as has been held concurrently by both the authorities below.

7. We note that the appellant has failed to pay service tax and file the necessary return. Consequently, the extended period of time limit will be available to the Revenue. The penalty imposable under Section 78 is also liable to be paid since the demand is upheld by resorting to the suppression clause under Section 73.

8. In view of the above, we find no infirmity in the impugned order which is sustained and the appeal is rejected.

(Dictated and pronounced in the open Court).

(Rachna Gupta)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Pant